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Attorney for Defendant Montgomery

**IN THE UNITED STATES DISTRICT COURT
FOR THE
NORTHERN MARIANA ISLANDS**

UNITED STATES OF AMERICA)	CRIMINAL CASE NO. 02-00010
)	
Plaintiff)	
)	
v.)	AMENDED STIPULATION FOR ORDER FOR
)	RE-SENTENCING OR ALTERNATIVELY
BERT DOUGLAS MONTGOMERY)	FOR CONTINUANCE
)	
Defendant)	
)	

WHEREAS, this matter has been remanded for determination of whether re-sentencing is appropriate pursuant to *United States v. Ameline*, 409 F.3d 1073 (9th Cir. 2005)(en banc).

WHEREAS, in accordance with the remand the Court has requested written submission on the issue of re-sentencing;

WHEREAS, Montgomery contends re-sentencing is appropriate because 18 U.S.C. § 3553 factors exist which the Court should take into consideration for sentencing and if such factors are considered then a lower sentence would be proper;

WHEREAS, while the United States disagrees with Montgomery's contention concerning the § 3553 factors, it does agree that a re-sentencing should occur as at oral argument on the last appeal, the Ninth Circuit indicated or otherwise implied that error may exist in the

Guideline calculation and the issue of the Guideline calculation has not been decided on appeal;

WHEREAS, if an error in Guideline calculation exists then that will result in another remand in this case without any determination on the reasonableness of the sentence;

WHEREAS, Montgomery believes that an uncorrectable Guideline calculation exists;

WHEREAS, the United States believes that at a re-sentencing it can correct or eliminate the real or perceived error in the Guideline calculation and avoid a possible remand based on the Guideline calculation;

WHEREAS, for different reasons, Montgomery and the United States are both in agreement that re-sentencing is appropriate;

WHEREAS, *Ameline* provides that written submission from the defendant can be dispensed if the parties stipulate to re-sentencing and the Court approves the stipulation;

WHEREAS, if the Court does not agree with the stipulation for re-sentencing, then it is requested that the due date for the written submissions be continued for at least thirty (30) days;

WHEREAS, minimum of thirty (30) days is requested as defense counsel needs additional time to further communicate with Montgomery in as much as Montgomery is in custody in New Mexico and they have only been able to speak or discuss re-sentencing whenever Montgomery is able to telephone and counsel is available.

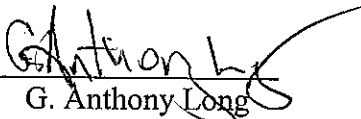
NOW THEREFORE, the parties hereto stipulate and agree as follows:

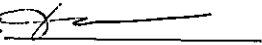
1. Re-sentencing is appropriate in this case; and
2. The court shall set a date for re-sentencing after January, 2007 in order to give the parties time to prepare for re-sentencing and arrange for defendant's transportation to Saipan.

3. If the Court denies re-sentencing, then the Court should, at the minimum, grant a thirty (30) day continuance, for the due date of the written submissions.

Law Office of G. Anthony Long

UNITED STATES ATTORNEY
FOR GUAM AND THE N.M.I.

By: 
G. Anthony Long
Attorney for Defendant

By: 
Timothy E. Moran
Assistant U.S. Attorney

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)	
Plaintiff)	
)	[PROPOSED]
v.)	ORDER FOR RE-SENTENCING
)	
BERT DOUGLAS MONTGOMERY)	
)	
Defendant)	
_____)	

Based on the stipulation of the parties and for good cause appearing:

1. Re-sentencing is appropriate in this case.
2. A sentencing hearing shall be held on _____, 2007 at
_____.

So **ORDERED** this _____ day of October, 2006.

ALEX R. MUNSON
Judge, District Court